



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-AR

December 2, 2011

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009.

ORDER OPENING INVESTIGATION

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I. INTRODUCTION

State law requires each common carrier of telecommunications services within the Commonwealth to file an annual return for every calendar year with the Department of Telecommunications and Cable (“Department”). If any common carrier neglects to file its annual return, it is subject to statutory forfeitures. In addition, the Department may withdraw the carrier’s registration and, where applicable, its intrastate tariff(s), thus preventing the carrier from operating and/or providing telecommunications services within the Commonwealth. The Department’s records indicate that 129 common carriers failed to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009, in violation of the statutory requirements. These common carriers are named individually in this Order’s Appendix. The Department opens this investigation on its own motion with regard to these carriers’ failure to file annual returns. These proceedings will be docketed under the generic docket number, D.T.C. 11-AR, with a sequential number for each individual case, *e.g.*, D.T.C. 11-AR-1, D.T.C. 11-AR-2. The docket numbers assigned to the proceedings for each individual carrier are also provided in this Order’s Appendix.

II. ORDER OPENING INVESTIGATION

Pursuant to G. L. c. 159, § 12(d), the Department requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” *i.e.*, telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations. *Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts*, D.P.U. 93-98, Order, at 12 (1994) (“*Common Carrier Regulatory Treatment Order*”). Each common carrier of telecommunications services within the Commonwealth must also file with the

Department an annual return for each calendar year by March 31 of the following year “or such subsequent date as in any case, for good cause shown, the department may fix.” G.

L. c. 159, § 32; G. L. c. 166, § 11; *see Annual Returns*, D.T.E. 05-95, Vote and Order to Open Investigation, at 1 (2005) (“D.T.E. 05-95”); *Annual Returns*, D.T.E. 03-76, Vote and Order to Open Investigation, at 1 (2004) (“D.T.E. 03-76”); *Annual Returns*, D.T.E. 02-13, Vote and Order to Open Investigation, at 1 (2002) (“D.T.E. 02-13”).

Any such common carrier that neglects to file its required annual return by the deadline set by the Department forfeits to the Commonwealth \$5 per day for the first 15 days, \$10 per day for the next 15 days, and a sum not exceeding \$15 per day for each day thereafter until the return is filed. *See* G. L. c. 166, § 12. Further, if the Department determines that a carrier “unreasonably refuses or neglects to make such return,” the carrier shall forfeit up to \$500 for each offence, as an additional penalty. *Id.* If, in the judgment of the Department, a common carrier neglects to file its annual return as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G. L. c. 159, § 39.

The Department also deems a carrier’s failure to file an annual return as cause for Department withdrawal of the carrier’s registration and, where applicable, its intrastate tariff(s), thus preventing the carrier from operating and/or providing telecommunications services within the Commonwealth. *See Common Carrier Regulatory Treatment Order* at 12. In particular,

[a]ny common carrier that has an approved tariff on file with the Department, and that has submitted a Statement of Business Operations, will be considered a “registered” common carrier in the Department’s new framework. Registered common carriers will be subject to the Department’s general supervisory authority, including specific requirements in G. L. c. 159, and the Department’s regulatory policies as articulated in Department Orders”).¹

¹ In its *Common Carrier Regulatory Treatment Order*, the Department eliminated the requirement that common carriers, excluding pay telephone providers, obtain a certificate from the Department before offering service within the Commonwealth but ordered all common carriers to continue to submit tariffs and to file annual returns, as well to file a Statement of Business Operations. *See Common Carrier Regulatory Treatment Order*, at 16.

Id. See also Application for Registration for Telecommunications Service Providers Other Than Payphone Service Providers – Statement of Business Operations, Department Form, at 7; *Registering to Provide Pay Telephone Services in Massachusetts*, Department Form, at 7.²

Further, the Department may withdraw the registration and “direct removal of public access line service from the payphones of any company” that fails to file its annual return and update its registration information. *Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39 and G. L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for the year 2000 by March 31, 2001, and to pay statutory forfeitures*, D.T.E. 02-13, Order D.T.E. 02-13-B, at 4 (Sept. 20, 2002); *id.* at n.3 (discussing payphone provider registrations, which state that “if the Registrant is found not to be in compliance with the Department’s requirements, the Department may withdraw registration and remove public access line service from the Registrant’s pay telephones”).

The Department’s records indicate that 129 common carriers failed to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009. These common carriers are named individually in this Order’s Appendix. As required by Massachusetts law, each named common carrier was registered to provide telecommunications services within the Commonwealth for the relevant calendar year by having on file with the Department an approved tariff and statement of business operations. *See G. L. c. 159, §§ 12, 19; Common Carrier Regulatory Treatment Order* at 12. Hence, each of the named common carriers were obligated to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009, as indicated in the Appendix.

² The Department recently amended the requisite affidavits of these registration forms to include bolded language that specifies the “[r]egistrant understands that failure to comply will be grounds for the Department to cancel the Registrant’s registration/SBO and tariff(s), thus preventing the Registrant from operating and/or providing telecommunications services within Massachusetts.”

For each year's filings, the Department provided the named common carriers with at least one written reminder of the filing requirements and extensions for several years' filings. Notwithstanding such extensions and additional notices, none of these 129 common carriers have filed the annual returns as required. Indeed, the notices mailed to many of these carriers were returned as "Undeliverable" or "Unknown" by the United States Postal Service to the Department. The Department notes that a carrier's failure to update contact information is a violation of state law, which requires a "communications service provider" to file with the Department "information on its business entity, including, but not limited to, name, business address, contact person and the telephone number, fax number and e-mail address of such contact person," to be updated annually. G. L. c. 6A, § 18H(e).³

Pursuant to the requirements discussed above, the Department hereby opens an investigation on its own motion with regard to the 129 named telecommunications common carriers' failure to file annual returns. These proceedings will be docketed under the generic docket number, D.T.C. 11-AR, with a sequential number for each individual case, *e.g.*, D.T.C. 11-AR-1, D.T.C. 11-AR-2. The docket numbers assigned to the proceedings for each individual carrier are listed in the Appendix to this Order.

In this investigation, the Department will determine whether the named common carriers have neglected or refused to file annual returns, and if so, whether the neglect or refusal was unreasonable. *See* G. L. c. 159, §§ 32, 39; G. L. c. 166, §§ 11, 12; D.T.E. 05-95, at 3; D.T.E. 03-76, at 2; D.T.E. 02-13, at 3. In reviewing each named common carrier's obligation to file an

³ Under this Chapter, communications service providers are defined as those who provide: (a) the transmission, conveyance or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless or other medium or method, regardless of the protocol used; (b) the ability to provide two-way voice communication on the public switched network; (c) wireless enhanced 911 service; (d) wireline enhanced 911 service; (e) interconnected VoIP provider service as defined by FCC regulations; (f) IP-enabled service; or (g) prepaid wireless service. *See* G. L. c. 6A, § 18A.

annual return for 2005, 2006, 2007, 2008, and/or 2009, the Department may consider, but not limit itself to considering, the extent and nature of the carrier's operations within the Commonwealth as well as the carrier's revenues for each of the applicable years. *See* G. L. c. 159, § 32; G. L. c. 166, § 11; D.T.E. 05-95, at 3; D.T.E. 03-76, at 3; D.T.E. 02-13, at 3. In addition, the Department may consider the carrier's registration status with the Secretary of the Commonwealth,⁴ as well as whether the carrier has reported that it operates within Massachusetts by filing Federal Communications Commission ("FCC") Form 499-A.⁵ The Department may also consider whether the carrier failed to file updated address and contact information to the Department, as well as failed to update that same information in any applicable intrastate tariffs. The Department may also consider these same factors when determining whether to withdraw the carrier's registration and intrastate tariff(s) on file with the Department.

Each common carrier named in the Appendix must attend the Department's evidentiary hearing, discussed below, and must provide the Department in writing on or before February 10, 2012, with the following additional information:

1. State whether the company filed the annual return for the relevant calendar year(s) as noted in the Appendix. If so, provide a copy of the annual return(s) and documentation of the filing(s). If not, explain why, and state whether the failure to file is reasonable.
2. State whether the company provided telecommunications services within the Commonwealth during the relevant calendar year(s) as noted in the Appendix.

⁴ This information is listed for each carrier in the Appendix to this Order. The Department acquired this information online from the Secretary of the Commonwealth's website at <http://corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp>.

⁵ The FCC requires all telecommunications providers to file FCC Form 499-A annually, with limited exception. *See* FCC Form 499-A Instructions, at 1 (Feb. 2010). Carriers report federal contribution amounts for telecommunications relay service, universal service, numbering administration, and local number portability support mechanisms via FCC Form 499-A. *Id.* When they file, carriers must indicate the jurisdictions in which they provide service. *See* FCC Form 499-A, Line 227 (Feb. 2010). The FCC reports submitted information on its website at <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>.

3. If applicable, state whether the Secretary of the Commonwealth has reinstated the company's authority to do business within the Commonwealth.
4. If applicable, provide the current company address and contact information and provide an amended tariff and Statement of Business Operations reflecting that change.

Should any named common carrier fail to attend the evidentiary hearing or timely provide the Department with the information specified above, the Department may make adverse findings of fact and order corrective action, including, but not limited to, a finding that the carrier neglected to file its annual return(s) and that the failure to file was unreasonable; make an assessment of forfeitures; and make a referral to the Attorney General for enforcement. *See* G. L. c. 159, § 39; G. L. c. 166, § 12. The Department may also withdraw the carrier's registration and, where applicable, the intrastate tariffs that it has on file with the Department, thus preventing the carrier from operating and/or providing telecommunications services within the Commonwealth.

The Department will conduct these investigations as adjudicatory proceedings, as defined in G. L. c. 30A, § 1(1). The proceedings for each common carrier under investigation are to be considered independent proceedings, and each will have a separate evidentiary record. The Department will, pursuant to the separate Notice of Investigation and Hearing for this docket, conduct hearings in this investigation on February 28, 2012, at 10:00 a.m. The Department will convene a separate public hearing for each common carrier to receive comments from the public and Legislature. Immediately after each public hearing, the Department will conduct an evidentiary hearing for each individually-named common carrier. Hearings will proceed in order of docket numbers D.T.C. 11-AR-1 through D.T.C. 11-AR-129 until completed.

The Department invites all interested persons who are substantially and specifically affected by the issues under investigation to petition to intervene in these proceedings. Petitions

to intervene in these dockets must be filed with the Secretary of the Department by 5:00 p.m. on February 10, 2012, referencing the complete docket number assigned to a specific company.

III. ORDER

Accordingly, it is hereby:

ORDERED: That the Department opens investigations, docketed as D.T.C. 11-AR-1 through D.T.C. 11-AR-129, into the failure of 129 common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009; and it is

FURTHER ORDERED: That the named common carriers must provide the Department with additional information in accordance with this order by February 10, 2012; and it is

FURTHER ORDERED: That petitions to intervene in this proceeding and written comments shall be filed with the Secretary of the Department by February 10, 2012; and it is

FURTHER ORDERED: That public and evidentiary hearings in this proceeding will be conducted on February 28, 2012, at the Department's offices.

By Order of the Department,

Geoffrey G. Why, Commissioner